IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 108 of 1995
with
CRIMINAL APPEAL No 109 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA and

MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowe to see the judgements ? YES

2. To be referred to the Reporter or not ? YES

3. Whether Their Lordships wish to see the fair cop of the judgement ? NO

4. Whether this case involves a substantial questio of law as to the interpretation of the Constitutio of India, 1950 of any Order made thereunder ?NO

5. Whether it is to be circulated to the Criminal Courts ? YES

STATE OF GUJARAT

Versus

FARUKBHAI AHMEDBHAI SHAIKH

Appearance:

1. Criminal Appeal No. 108 of 1995
MR ST Mehta, APP for the appellant-State.
MR Saurin A Shah for Respondent No. 1 (Appointed)

2. Criminal Appeal No. 109 of 1995
Mr. ST Mehta, APP for the appellant-State.
Mr. SAURIN A SHAH, for the respondents(Appointed)

CORAM : MR.JUSTICE K.J.VAIDYA and
MR.JUSTICE D.G.KARIA

Date of decision: 13/08/9...R

ORAL JUDGEMENT (PER: VAIDYA J)

These two appeals by the State of Gujarat, first one for the enhancement of the sentence against Farukbhai Ahmedbhai Shaikh, and second against an order of acquittal against Rajesh @ Raju and six others, arise out of the common judgment and order dated 29-10-1994, rendered in Atrocity Case No.20/93, by the learned Additional Sessions Judge, Vadodara, wherein all the respondents who came to be tried for the alleged offences punishable under sections 341, 354, 452, 376, 143, 149 of IPC, read with section 3(xi) & (xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1985, and sections 7(b)(d) and 10 of the Protection of Civil Rights Act, 1955, were at the end of the trial, so far as Faruk Ahmed Shaikh was concerned, he was convicted for the offences punishable under sections 376 and 511 of IPC and sentenced to suffer RI for one year and six months and in default, to undergo further RI for one month, while the rest of the other accused persons came to be acquitted.

2. When these two appeals came-up on admission board for the first time, on going through the impugned judgment and order, we at the very outset were prima facie shocked to notice quite perfunctory and perverse manner in which the trial came to be disposed of convicting Faruk on the basis of totally untrust-worthy evidence of PW-3 Savita. In this view of the m..R

were just constrained to call for the R & P and also appoint Mr. Saurin A. Shah, learned advocate present in the Court room to assist the court. Not only that but before hearing the above matters, both Mr. S.T. Mehta, the learned APP and Mr. Saurin Shah, learned Advocate (Appointed) for the accused were availed of the record and proceedings of the case which they have extensively used before arguing the matter.

2.1 Having regard to the facts and circumstances of the case, wherein both learned APP and the learned advocate for the accused having argued the case at full length for two days, with their joint request and consent, it has been decided to finally hear and dispose of this appeal today only.

3. We are quite conscious of the fact that so far as Criminal Appeal No. 108/93 is concerned, it is an

appeal for the enhancement of sentence by the State. We are also further and equally conscious of the fact that the convict-Faruk has not preferred any appeal against his order of conviction and sentence. But at the same time, merely because no conviction appeal is filed, that can never prevent us to do justice and to express ourselves if the trial court has patently blundered in recording the order of conviction and sentence on the basis of totally unsustainable evidence of PW-3 Savita. It is indeed quite likely that the accused perhaps misapprehending that if he appeals what ought he did not know the High Court may perhaps enhance the sentence swayed by the allegation of he being a member accused of the gang rape and it is perhaps because of this lurking misapprehension only that he did not dare to file appeal !! Be the case as it may, but that certainly does not mean that we as High Court Judges should conveniently shut our eyes to do justice and protect the legitimate interest of the accused once our conscience is fully satisfied that the convict had been a victim of totally false and malicious allegation !! A citizen has indeed all fundamental rights, including the liberty to live freely and enjoy his life. This liberty, freedom does not merely mean that he should not be illegally confined or restrained or arrested or detained, but it also means that he should be allowed to live his life without any unwarranted blemish to his name. The concept of liberty and freedom cannot be merely confined in narrow compass of free physical existence and movement of person and various other fundamental rights enshrined in the Constitution only. It does cover as well in its fold his fair name and reputation also and accordingly whenever the Court feels beyond any manner of doubt that there is a case of illegal, unjust, unwarranted character assassination or there is a case of eclipsing good and fair name of any accused before the Court by foul means, and the accused is ultimately acquitted on giving merely benefit of doubt or in a given case where he is unfortunately convicted and for whatever reason did not file an appeal but on examining the evidence it is found to be the case of quite deserving clean and honourable acquittal then in that case, it is the foremost and boundless duty of the Court to give him a clean chit of unscathed acquittal !! There are cases also where the accused are given benefit of doubt, where the Courts would be quite helpless and accordingly unjustified in giving clean chit. But there are cases where as crystal clear as at the depth of 100 ft. of water if one can distinctly see an object lying at the bottom, then in such cases the Court must liberate accused not only from the prison but from bad name also which has unfortunately

been chained around him because of the baseless malicious accusation. The importance of name, prestige and reputation in life of a person can never, never be under estimated as persons after persons are found either committing suicide or laying down their lives just only to save and protect their honour and name. In this way to some the reputation and honour of a person is quite much more important than the physical existence and the life. Fundamental right of the liberty of citizen accordingly does not merely mean that he should not be arrested illegally and unjustly and detained, but it has a second side of the coin also which extends to and takes in its sweep his further precious right of his name is not illegally and unjustly tarnished, stigmatized for ever by continuing the order of baseless conviction and sentence and that too on the wild allegations of being a member accused of the gang rape charge when the same is not sustainable at all ! As observed by the Supreme Court 'Right to life enshrined in Article 21 of the Constitution means something more than survival, it would include the right to life with the human dignity. It would include also all those aspects of life which go to make the man's life meaningful, complete and worth living'. Its true that these observations are made in context of the facts and circumstances of that particular case but nonetheless the governing spirit of Article 21 ought to be reasonably read as we have in the facts of the instant case. What we are saying are saying in respect of the case and the position of the accused at the end of full-dressed trial, after recording of the evidence. The reason is when the complaint is filed at that stage there may indeed be ordinarily nothing on the basis of which it can be conclusively said that an accused is victimized to be stigmatized. To allege a person as rapist and that too as the member of gang is too serious an allegation to bear, worse than to live with some fatal incurable disease rather worst then the acid thrown on the face injuring and de-shaping the human face which is too difficult nay perhaps even impossible to remove even after the orders of acquittal ! In the instant case, it is quite true that the accused has not filed any appeal against his order of conviction and sentence. But then where was the question of filing conviction appeal because by the time the trial was over, he had already undergone the sentence awarded to him ! This is what unfortunately our 'criminal justice system' is !! where many a time innocent citizen charged of serious offences when not bailed out has to languish in jail either because of the trial not taking place at the earliest and/or thereafter if appealed against conviction appeals are not heard for quite long time adding to their

miseries. Such delays in disposal of cases at trial and thereafter at the appellate stage in our opinion affects the basic valuable human right apart the right of speedy justice enshrined in Article 21 of the Constitution. In given cases there indeed not be graver injustice than the delayed justice - at the trial stage or thereafter at the appellate stage. This includes civil as well as criminal cases !! This is entirely because of inadequate numbers of Courts and Judges and therefore the blame of doing injustice lies at the door of the Government; in particular at the door of our elected members in the Legislative Assembly and of the Parliament ! In such a helpless situation, where was the question of filing an appeal ? To pay hard earned money to the learned Advocate ? It is under these compelling circumstances, we, as a responsible court, feel that though the accused has not filed an appeal, still we are under the Constitutional obligation to render Justice when we undoubtedly feel and find that the trial Court has committed a patent blunder in recording totally unwarranted order of conviction deserving removal of stigma attached to the name of accused. More than the compassion, rather more than the right of the accused the citizen of this country, we deem it a privilege sacred duty of the Court under the constitution to give justice, crystal clean bill of acquittal.

4. WHETHER AN ACCUSED CAN BE CONVICTED ON AN UNCORROBORATED TESTIMONY OF THE PROSECUTRIX ? With the aforesaid preliminary observations, in order to appreciate the validity of the reasons given by the trial court while reaching the ultimate conclusion of conviction against Faruk under sections 376 read with 511 of IPC, we first of all propose to refer to the Charge (Exh. 36) and thereafter the evidence of PW-3 prosecutrix Savita, and medical evidence comprising of PW-1 Dr. R. N. Tandon and PW-2 Dr. I.B. Patel and other prosecution witnesses.

4.1 Before we enter into the appreciation of evidence of PW-3 where she alleges to have been gang raped, we are indeed quite conscious of the fact that there is no such invariable rule of the appreciation of evidence where the evidence of the victim girl/women cannot be accepted and relied upon for recording the order of conviction and sentence save and except only when it is duly corroborated. In fact, for this very purpose, as to how indeed the evidence of the victim of rape is required to be appreciated, we are quite aware of the illuminating Supreme Court decision rendered in case of Bharwad Bhoginbhai Hirjibhai versus State of Gujarat, reported in AIR 1983 SC 753. Not only that but we have

also before us, yet one more latest decision on the point. rendered in the case of Mohanlal Amarji Marwadi versus State of Gujarat, reported in XXXVII (1996) 2 GLR p-200. The quint essence of both these judgment is that even on an uncorroborated testimony of the victim of sexual assault, accused can be convicted, but ultimately that does not dispense with the overall intrinsic credibility and consequential dependability of such a witness. In otherwords, if the evidence of victim girl/women is found to be of the sterling quality there is indeed no requirement of law to insist for further corroboration.

5. EVIDENCE OF PROSECUTRIX : Having attuned and focussed ourselves to the guiding principle as to how indeed we are to evaluate the evidence of prosecutrix, we straight way now proceed to appreciate the evidence of PW-3 Savita before the Court. According to her, the incident in question wherein she came to be gang-rapped by Rajesh @ Raju and 7 others took place on 6-3-1993 at 21-45 hours on the second floor of "Unnati Vidyalaya" a building under construction at Vadodara. In support of this allegation, the prosecution has examined several witnesses principal amongst them is PW-3 Savita herself. According to her, she is the original resident of village-Nathpura, (Taluka-Devgadh Baria, District (Panchmahals). She had married ten years back with one Dolat Bachu of Shivrajpur which continued for about one and half year. Thereafter she was deserted and after taking divorce, she was staying with her father. On the date of the incident, she was staying with her sister PW-5 Ramila and her husband, PW-4 Arvind and PW-6 Ranjan Nurbhai who belonged to her village and was doing the labour work. On 6-3-1993 at about 10-00 PM in Vijaynagar Highschool after taking supper, she was sitting and chitchatting with PW-4 Arvind and PW-5 Ramila and were talking about returning to their respective houses. At that time, 8 persons came and gave some thrashing and threats to PW-4, PW-5 and PW-6, and driven them away. Thereafter all these 8 persons dragged PW-3 in the adjoining room. Thereafter, one boy whom she did not know gave a slap. After administering the threats, out of 8 boys, 2-3 boys dragged and other 2-3 boys gagged her mouth. Thereafter, accused No.1 - Rajesh @ Raju committed sexual intercourse. After Rajesh completed the intercourse, another man came to her who was identified by her before the court, (who on asking the name disclosed him) as Faruk. PW-3 identified the accused no.1 as a person who had first intercourse with her. After Rajesh and Faruk completed their sexual intercourse, the boys standing outside were shouting

"maro varo... maro varo" when translated in English, it means "my turn, my turn" !! In the meantime, her sister PW-5 and brother-in-law PW-4 came there with the police and arrested Faruk who was found naked ! Thereafter the police took accused Faruk and PW-3 Savita to the city police station, Vadodara where she gave a complaint (EX-66) before PW-19 PI Raysinh Shivabhai, which came to be recorded on 7-3-1993 at about 11.35 p.m. One month thereafter the incident, the police once again called PW-3 in 'Narmada Bhuvan' and asked her to identify the accused who was absconding. She had identified him in the police station. She did not know the names of other accused persons. Thereafter she was forwarded for the medical examination to the SSG Hospital. In her cross-examination in para-8, she has admitted that after the alleged incident, she married with PW-7 Malji Khapar through whom she had one son. In para-9 of her cross-examination she has also admitted that the time of alleged offence as at 10.00 p.m. was given on her rough estimate. In para 10, she has further admitted that she did not inform to police about the incident as accused had done illicit act in the presence of police !! In para-11 of her cross-examination, she has further admitted that some senior police officer had asked about the names of the accused in her presence and that she did not remember that. She has also admitted that before the alleged incident, she was not knowing any accused person Accordingly she was not knowing names of anybody and she gave names after she was introduced by the police to some persons as accused In para-14 she has denied that the accused after beating PW-4, PW-5 and PW-6, they were driven out. She has also denied that 8 persons came. She has also denied that 8 boys dragged her. She has also denied to have stated in the complaint that the boys had administered threat and 2-3 persons dragged her and 2-3 boys gagged her mouth. She has also denied in her complaint that one person committed sexual intercourse. She has also denied that accused No. 1 Rajesh gagged her mouth and inserted his penis in her vagina. Now on reading the complaint (Exh. 66), it clearly appears that this allegation stands self-exposed as nothing is specifically alleged against accused No. 1 Rajesh. On the contrary on further reading FIR Exh. 66, PW-3 has clearly stated that the first person who had forcible sexual inter course with her was Faruk !! In para-15, she has denied that when she was taken to the hospital at 5-00 a.m. She had shown the injury on her chick. Further according to her, at the time of the incident, her hands, feet and back were bruised. There were also injuries on both the sides of the face and as a result it was swollen. But as against this if we peruse the

evidence of PW-1 Dr. Tandon and the medical certificate issued by him, it is very clear that no such injuries as deposed before the Court are stated therein. Accordingly, the medical evidence to this extent clearly falsifies the evidence of PW-3 !! Further, on seeing the complaint Exh. 66, the story of PW-4, PW-5 and PW-6 were given beating, is not there at all !!. No doubt such sort of improvements in evidence before the Court may not be attached undue weightage and importance as the type of embellishments, embroidering, adding little salt and spice here and there to the story is quite natural even in some over enthusiastic, unintelligible truthful witnesses. In para-18 of her cross-examination, PW-3 has admitted that when police came at the scene of offence, she had no talk with police. Not only that but no such talks she had with PW-4, 5 and 6 when they came with police. This part of story is also unnatural and improbable !! She has also admitted that on very next day of the incident, she had married with Malji PW-7 !! In para-21 of the cross-examination she has admitted that she has not stated in her complaint that police personnel arrested Faruk in his naked condition. She has also admitted in para 22 of cross-examination that she did not know as to who were the owners of the building under construction !! She has also admitted that she did not know the name of the place where the alleged incident took place !! Thereafter in the next breath she named the place of offence as Vijaynagar High School - not 'Unnati Vidyalaya' !! In para-23 of cross-examination the defence has put its case, as to how and under what circumstances entirely false case came to be concocted ! She has also admitted in para-24 that at the time when she gave a complaint, 8 accused persons were not present and one had absconded (NOTE : This answer prima-facie appears to be as a result of some tricky question put to PW-3 Savita by the learned advocate for the accused,where she is luckily not trapped when she replied that FARIYAD AAPI TYARE AATHEY AAROPIO HAJAR HATA NAHI PARANTU EK JAN BHAGI GAYO HATO. This to be translated in English means when the complainant was given eight accused persons were not present, but one of them had absconded. The proper question at the most ought to have been - JUO FARIYAD AAPTI VAKHATE AANTHEY AAROPIO HAJAR HATA NAHIN' To be translated into English Look here at the time of giving complaint all eight accused persons were not present. To appreciate xx xxx xxx xxx xxx xxx xxx xxxxx xx xx xx x this important aspect, we may recall here the facts of the case where according to the prosecution, eight accused committed crime out of which one accused managed to escape from the place of the incident, when the police came. In this view of the matter, had indeed PW-3 was

little careless her answer in the cross would have been "It is true that at the time of the incident all eight accused were absent " This in turn would have lead of great confusion. As stated above, fortunately witness of her own deposted that - FARIYAD AAPI TYARE AATHEY AAROPIO HAJAR HATA NAHIM PARANTU EK JAN BHAGI GAYO HATO ". It is only with a view to see that witnesses are not confused and misled to give convenient answers resulting into serious miscarriage of justice, and further, the appellate court has also an ample opportunity to know as to answer given is in respect to which question, that in the Criminal Procedure Code, Section 276 has been engrafted which reads as under :-

Sec. 276 : Record in trial before Court of Sessions :-

(1) In all trials before a Court of Session, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the presiding Judge himself or by his dictation in open Court or, under his direction and superintendence, by an officer of the Court appointed by him in this behalf.

(2) Such evidence shall ordinarily be taken down in the form of a narrative, but the presiding Judge may, in his discretion, take down, or cause to be taken down, any part of such evidence in the form of question and answer.

(3) The evidence so taken down shall be signed by the presiding Judge and shall form part of the record. "

Now it is true that sub-section (2) of Sec. 276 directs that the evidence shall ordinarily be taken down in form of narrative but at the sametime, it is further provided that the presiding Judge may, in his discretion, take down or cause it to take down any part of such evidence in form of the question and answer. Here the phrase 'may in his discretion' means must when nature of question put to the witness by the learned Advocate for the accused is so complex, compound and placed with a view to confuse him/her and trap and fishout an answer favourable to accused he is required to be duly protected by the trial court. The reason is when a witness is examined in the Court, mostly he being new to the Court atmosphere and accordingly sometimes being over

conscious, having quite worried Court complex about his performance even if he is honest and truthful he feels himself naturally quite embarrassed, and accordingly, confused while replying. Under such circumstances, his 'real trial' begins, with beginning of the cross-examination by learned advocate appearing for the accused. Sometimes, for whatever reasons, in his unguarded moment many a time when such complex, compound, tricky mischievous questions are put to him, the answers to which cause unnecessary confusion, resulting into saying something unintended in favour of the accused !!. Many a times attempts are made to put tricky questions making a witness quite embarrassed and confused, and the answer taken out in such unguarded moment are made mountain of mole hill and as a result sometimes accused getting totally unjust and illegal acquittal also ! This creates the real problem for the court while appreciating the evidence, more particularly, the appellate Court before which (no examination of witness has taken place) !! Now tricky, confounding questions are aimed at confusing the prosecution case by confusing a witness to earn unjust and illegal acquittal. Thus with a view in the first instance not to embarrass and confuse unguarded witnesses, the discretion is vested in the trial Judge to depart from the ordinary procedure of recording evidence in narrative and in its place any part of evidence be taken down in the form of question and answer. This on the one hand will protect the concerned inexperienced, unwary witness in understanding the question in correct perspective and accordingly answering to it clearly which in turn on the other hand will straighway frustrate an attempt of some scheming learned advocate to mislead the witness in cross examination, and ultimately thereby the trial Court, which in turn shall help the trial Court and the Appellate Court to appreciate the evidence correctly and in proper perspective. In fact, when the witness feels shy, showing lack of confidence, worried, confused because of some bewildering confusing questions put to him, it is the duty of the trial Judge to see that he is properly protected, comforted and thereafter made to give evidence in the witness box. This is very much necessary in the interest of justice. For this purpose both the learned PP incharge of the case and the learned trial Judge shall have to be on the constant guard.

6. MEDICAL-EVIDENCE : In order to test the veracity of PW-3, regarding the alleged gang rape and injuries received on her person during the course of forcible intercourse, let us now refer to the medical evidence of PW-1 Dr. R.N. Tandon. According to this

Doctor, PW-3 Savita was brought to him with police Yadi and was examined on 7-3-1993 at 5-00 AM, that is to say within six hours from the time of alleged gang-rape. On examining her body, according to Doctor, there were (i) no marks external injuries !! (ii) black pubic hair were present but they were not matted !! (iii) injury on vulva was absent !! (iv) hymen show multiple old tears, no fresh tear or active bleeding noticed !! (v) purchetters were intact, and vaginal opening admits 2 fingers easily !! (vi) injury in vagina absent, samples of blood, saliva, pubic hair, vaginal swab disclosed presence of human siemens. In opinion of this Doctor, PW-3 Savita was habituated to the sexual intercourse and that the same was committed within 24 to 48 hours. On the very same day, all the 7 accused persons were brought to him for examination in respect of which he has issued medical certificates which are produced at Exs. 26 to 32. In para-6 of his cross-examination, this Doctor admits that PW-3 Savita had given general history of rape, but did not give any details. He has also admitted that while examining PW-3 Savita, he did not find any signs indicating sexual intercourse committed with force. In para-7 of his cross-examination, this Doctor has further admitted that semen can be classified in four groups like the blood-groups and that the groups of semen differs from person to person. He also admitted that in the certificate he has not shown the group of the semen. In para eight of his cross-examination, Doctor has admitted that he has not examined clothes put on PW-3 Savita. Thereafter immediately he has stated that there was some white stain on her petticoat. He has also admitted that he has not checked the Sari put on by PW-3 Savita. He does not remember whether infact he had checked. {Note :- Now had indeed PW-1 Dr. Tandon examined Sari put on by PW-3, he would have surely made notes about it. Now since no such remarks are found in case-papers or in any other papers, it is quite safe to assume that PW-1 Dr. Tandon had not checked sari put on by PW-3. Not that always prosecution case turns upon examination of cloths put on by prosecutrix but in a given case such a remissness on the part of M.O can assume great importance in favour of accused, in absence of other clinching medical evidence on the record ! In the facts and circumstances of instant case, non-examination of Sari of PW-3 further weakens the prosecution case}. The white stain found on the petticoat was of what, that can not be said without chemical report. In para-9 of his cross-examination this Doctor has stated that when two things come in contact, things get exchanged. He has further stated that while examining vagina of PW-3 Savita, no pubic hair of other

persons were found. Not only that, no semen was found on the pubic hair of PW-3 Savita. In para-11 this Doctor has stated that PW-3 Savita had disclosed her age as that of 21 years and her chicks were not swollen. She had not even complained that there was a pain in her vagina. She had come for medical examination without taking bath. This Doctor has also stated that a lady with a strong will, if she is raped, would resist. In para 13 of the cross-examination, this Doctor has admitted that accused Faruk was also sent for medical examination at 5-00 AM on 7-3-1993 and at that time he had not noticed any element or hair of PW-3 Savita from the body of Faruk.

6.1 The other medical evidence consists of PW-2 Dr. I.B. Patel. According to him, on 13-4-1993 he had examined Rajesh @ Raju. While examining his person, nothing incriminating was found. This was obvious because Rajesh came to be examined after about one month and six days. In this view of the matter, his evidence is of no assistance to the prosecution.

7. Duty of Medical Officers examining victim of the rape :- At this stage only we must say as it appears from the evidence of PW-1 Dr. Tandon that he has not examined PW-3 Savita thoroughly rather to the desirable best extent as he was ordinarily required to while examining the rape victim. Merely noting the external injuries and injuries on the private part, examining public hair, noticing blood, semen and matting of hair, though are undoubtedly necessary, are not by themselves enough. As observed by Dr. Modi {in Dr. Modi's Text-book of Medical Jurisprudence & Toxicology in Chapter-XVI "Sexual Offences" under the caption of 'examination of victim'} in addition to examining the marks of injuries on external and private part, the victim of rape may experience difficulty in walking and pain in micturition or defecation and accordingly, the gait of the victim should also be carefully examined and noted down. Further, according to Dr. Modi, after the rape the victim female many a time suffers from convulsions, depression, epileptic fits, etc. In that view of the matter, in our opinion, the note regarding the post-rape medical aspect should also be mentioned in the medical certificate. Not mentioning of this does not necessarily mean that the victim girl in all cases are giving a false evidence but in a given case when there is an allegation of concoction and false charge levelled against the accused person, indeed much more in cases of gang-rape it provides an additional assistance to the Court in evaluating the evidence of the raped victim in proper perspective to reach just decision.

7.1 Further, yet in one more book on Medical Jurisprudence viz., "Taylor's Principles & Practice of Medical Jurisprudence" edited by A. Keith Mant, in Chapter V 'Medico legal Examination of the living', it is observed that -

"7. A detailed medical report must be prepared as soon as possible after the examination has been concluded, and before the laboratory results are available. This report must include;

a. the identity of the patient examined;

b. the place, date and time of the examination.

c. the identity of the authority requesting the examination;

d. the fact that consent to examination and report was obtained.

e. the identity of all persons present during the examination.

f. the details of all the history, general examination and special examination performed;

g. the description of all specimens taken, and their disposal;

h. the clinical opinion formed during the examination;

i. the time spent in the examination.

A copy of this report should be retained by the examining doctor, and should be available together with the original examination notes, should the matter come to Court.

A medico-legal situation varies from an ordinary clinical problem in one very important aspect. In "ordinary" clinical practice the patient comes to the Doctor for diagnosis and treatment. In medico-legal practice the patient is frequently brought to the physician by relatives, police or lawyers. Very often this

"interested parties" have already made up their minds as to diagnosis, and are merely asking the Doctor to confirm the opinion that they have reached. The patient seen under the circumstances of a medico-legal situation may therefore have "an axe to grind" and it is vital that the Doctor bears this fact in mind through out his history taking and his examination.

There are certain principles, therefore, that must be borne in mind by the examining doctor in a medico-legal situation. And he would be well advised to remember them throughout the history taking, examination and preparation of the report :

1. Detail
2. Impartiality
3. Observation
4. Suspicion

These are the essential principles of forensic medicine. The doctor who constantly remembers that "things are not always what they seem to be at first glance" will avoid many of the pitfalls of the medico-legal situation.

Any doctor who gives a dogmatic opinion based upon inadequate clinical findings each of no value to his instructing solicitors or to the Courts. Such an opinion, unsupported by clinical evidence, could be taken to indicate extreme bias on the parts of the doctor and could nullify the value of all his evidence."

7.2 In the very book, it is further observed that "The specific history of the alleged incident must be very carefully taken down, for it is this portion of the history that will be later found to be consistent or inconsistent with the examination findings. Specific questions must be asked by the examining doctor as to :

1. the date, time and place of the alleged acts;

2. the time of first complaint, and a explanation for any delay in this complaint;

3. what clothing was removed from the victim, and how and by whom it was removed;

4. what clothing was removed from the assailant, how and by whom;

5. was any general force used by the assailant and, if so, where and how;

6. was any pain experienced earlier at the time of the incident or subsequently;

7. what were the relative positions of victim and assailant during the acts complained of;

8. did ejaculation take place during the act, either within the vagina or outside;

9. what are the details of the act or acts alleged;

10. was any form of contraception used during the act;

11. did the victim struggle, scream or injure the assailant in any way;

12. has the victim changed clothes, or washed any of the clothes since the alleged assault.

13. has the victim bathed or washed any part of her body since the alleged assault.

General observation of the patient should be maintained by the doctor throughout the taking of the history. This observation must extent to the patient's demeanor and the examination notes must record if she is distressed, tearful, calm or aggressive. Women react in many ways to assault, and it is dangerous to form any opinion based solely on the demeanor. Nevertheless, accurate observation of the behaviour is an essential part of the medical examination and it may play an important role when all the examination findings are weighed together.

7.3 It is further observed in Taylor's Book that

"General Clinical examination" must follow in every case and this must include observation of the patients height, weight and built" as well as routine examination of all bodily systems and the recording of all the clinical findings both normal and abnormal. In our opinion, it will help facilitate court while appreciating the evidence of the victim of rape as to whether and to what extent she would or would not be in a position to offer resistance to indecent assault on her. For this correspondingly it is equally important for the medical officer to mention about the age, height and built of the accused also. It is only from the rival data that the relative strength of the victim-girl to offer the resistance to rapping accused at the time of the rape could be reasonably assessed.

7.4 Over and above, how the Doctor is to prepare the medical report, in Taylor's Principles and Practice of Medical Jurisprudence, with a view to save Doctor from embarrassing situation in the court room during the cross examination, some useful tips are also given for instructions and pretrial conference. This also being quite important in the over all interests of justice, we reproduce the same hereunder for the benefit of the prosecuting agency. We hope that the learned Public Prosecutors of the State henceforth will take note of this and henceforth do the needful in the matter.

INSTRUCTIONS AND PRE-TRIAL CONFERENCE - The doctor may find himself involved in legal medicine as either a professional witness, where he will be required to give evidence of fact arising out of his own examination of a patient, or as an expert witness, where he will be required to give evidence of opinion which may be based upon his own examination findings or on his interpretation of the examination findings of another doctor.

The responsibility for giving adequate instructions to an expert medical witness lies primarily with the instructing lawyer, and it is his duty to provide the doctor with all the information available, including information that at first glace may not be in the client's best interest. It is only by giving full and frank instructions that the lawyer can expect a valid opinion from his expert that will be maintained in the face of cross examination in Court.

Incomplete instructions may lead to a complete volte-face by the doctor in the course of

cross-examination when the full details of the situation may be put to him for the very first time by opposing counsel. Omission by instructing solicitors of even a small portion of the available information may cause the medical expert to reach a wrong conclusion which in itself may not be in the best interest of the client.

No doctor should be prepared to give an expert medico-legal opinion on inadequate instructions, and there should be no hesitation in informing the instructing lawyers of this fact.

Because of the pressure of work that now seem to exist, instructions and requests for opinions are often delayed until the very last moment. This applies particularly in criminal matters where the defence (and sometimes even the prosecution) suddenly become aware that they require a medico-legal opinion 'yesterday' and expect to obtain a full and carefully prepared report and opinion from a busy medico-legal practitioner within 24 h. The fact that such a report is often forthcoming within that very short period of time says much for the dedication and application of the medico-legal practitioners, but it is far from an ideal situation and carries with it the very real risk that some aspect of the case has not been considered by the doctor and that as a result his opinion is not as soundly based as it should be. The only guarantee of a sound, valid and supportable opinion from a correctly chosen medico-legal expert is full and early instructions.

Once the instructing lawyer has received the report and opinion from the doctor it is essential that there be some sort of conference between himself and the expert. The purpose of such a conference is not to persuade the doctor to change or omit some of his examination findings, but is to ensure that the lawyer is fully aware of the significance of the medical findings. It also serves to educate the doctor in the matters that the lawyer will attempt to emphasis during the course of his examination-in-chief.

The lawyer should ask the doctor whether there are any parts of his opinion and report which may be challenged by other experts in the field. Are the views expressed those that are commonly held in the medical profession ? Can there be any other interpretation of the findings that may vary from those expressed by the doctor ?

The lawyer must remember that the Court-room is

his normal environment, but that to many doctors it is a strange and hostile world. It is therefore advisable to warn the tiro medical witness of what is likely to happen to him in Court. He should be instructed briefly in the general scheme of examination-in-chief and cross-examination, and he should be warned that the bench may also intervene with questions if the judge has not fully grasped a point or if he feels that counsel has omitted to refer to some important matter.

It is often helpful if the lawyer explains to the tiro medical witness that two potent weapons may be used by opposing counsel :

1. flattery-designed to persuade the medical witness to go slightly out of his own field of expertise and thereby to risk exposure to ridicule by a better qualified expert later in the hearing;

2. rudeness-designed to make the doctor lose his temper and thereby to give unconsidered and ill-advised answers.

To the practising lawyer these two ploys are perfectly legitimate weapons to use : to the tiro doctor they smell of treachery. If the medical witness has been forewarned of these and similar dangers he is less likely to be embarrassed in Court.

It is the lawyer's duty to ensure that the medical witness has his notes with him before he goes into Court, and also that any books or references that he may wish to make use of are available."

8. OTHER PROSECUTION WITNESSES - This shall take us now to appreciate the evidence of other prosecution witnesses examined in support of PW-3 Savita.

8.1 The first amongst them is PW-4 Arvind Khapar, who happens to be the brother-in-law (husband of sister) of PW-3 Savita. He has admitted that after taking supper, when they were sitting, the accused persons came and gave slaps, but since there was darkness, he was not able to identify any one of them. He has also further stated that as he was afraid, he along with his wife PW-5 Ramila and PW-6 Ranjio escaped. However, accused caught hold of PW-3 Savita so that she could not go down. Thereafter the accused persons took PW-3 Savita inside the house. According to this witness, since they were

beaten he apprehended that PW-3 Savita would also be badly handled, and therefore, they went to file a complaint before the police. When they returned, they found one accused in a naked condition and that was Faruk who was present before the court. He also noticed PW-3 Savita at the scene of incident without clothes. Other accused persons were standing outside. He did not identify any one of them because of darkness. Thereafter the accused persons were taken to the police station. After some time to identify one accused, he was called by the police and he had identified the accused No. 1 Rajesh. From the evidence of this witness, it is very clear that he has not identified 7 accused persons. The only person who came to be identified was Rajesh before the police. This is also quite doubtful because when there was a complete darkness, it was simply impossible to believe that he could have seen accused No. 1 Rajesh at the time of the incident so that he can subsequently identify him. Not only that but this witness has clearly improved upon his story by giving evidence before the Court which was never stated by him before the police. This is brought on record from the evidence of PW-19 I.O Raysinh. In para-30 of his cross examination he has admitted that PW-4 Arvind in his statement before the police not stated that 'he and PW-6 Ranjio was given slaps or this people had caught PW-3 Savita or that all accused took PW-3 Savita inside, they were beaten' and that Savita was in a condition without clothes' etc. etc. etc.. In this view of the improved version ultimately left with general and vague evidence of PW-4, there is indeed nothing on the basis of which it could be said with reasonable certainty that he has made out any case in support of the prosecution. In fact, looking to his evidence, he appears to be quite liar !!

8.2 The next witness is PW-5 Ramila, who happens to be the wife of PW-4 Arvind. Her evidence is also as general and vague as that of her husband PW-4 Arvind, and accordingly, there is nothing on the basis of which any of the accused can be connected with the crime alleged against them, more particularly when the accused persons were unknown to this witness and admittedly there was complete darkness. In fact, this witness in para 4 of her examination-in-chief has identified accused who was found naked as accused No. 3 Sunit Uttamchand Wadhwani !! This is quite contrary to what PW-3 Savita and other prosecution witnesses who named that naked accused as Faruk. Not only this but likewise PW-4 this witness has given quite improved version before the Court which was never her case while giving statement before the police. In fact, this improvement is brought on record in

evidence of PW-19 Investigating Officer who in his cross-examination at para-31 admitted that PW-5 Ramila had not stated before him - that accused had caught hold of Savita, and Arvind and Ranjio were given slaps and threatened to go down else they would be killed, etc. etc. We have indeed no difficulty in stamping out this witness also as a 'liar'.

8.3 PW-6 Ranjio Nurabhai is the next witness, who happens to be nephew of PW-4 Arvind. He refers to one person as naked when he went with the police, whom he identified before the court as Faruk. The evidence of this witness does not inspire our confidence as he had identified Faruk for the first time before the court on 10-6-1994 i.e. after about 15 months and that no when test identification parade was held prior to that !! Not only that but likewise PW-4 and PW-1 he has also materially improved upon his earlier statement before the police !! So far as the ex-gratia compensation of Rs. 10,000/- to PW-3 by the Social Welfare Department is concerned, he has denied any knowledge about the same. It is alleged in his cross-examination, which is of course denied, that because some quarrel took place, they had gone to the police station. He has also denied the allegation that with a view to take money (ex-gratia compensation) after 2-3 hours' talk with the police, a false complaint has been filed. This witness also in view of his nature of evidence cannot go unstamped without stamping him as 'liar'.

8.4 PW-7 Malji Khapar is yet another witness (as admitted in para-9 of his cross-examination married with PW-3 after 2 days of the alleged incident !!) which the prosecution has examined in support of its case, which ultimately instead of helping has further defused and worsened the prosecution case when he admitted in para-11 of his cross-examination that he had not given the names of any accused to police as he was not knowing their names !! He has also admitted that PW-3 Savita had neither any injury nor bleeding. He has also admitted as not to have stated before the police that on inquiring from PW-3 Savita, she had stated that the naked person was Faruk and one another person who after giving threshing, gagging the mouth had committed sexual intercourse and one unknown person had ran away. This witness has also incidentally admitted that after the incident PW-3 Savita has been awarded Rs. 10,000/= by the Government. It is suggested in the cross examination that as there was some quarrel with the accused persons they have been falsely implicated by making a false case. On going through the evidence of this witness, there is

indeed nothing on the basis of which any implicit reliance can be placed to record and now sustain the order of conviction. He also appears to be liar falsely projected to frame up innocent accused persons.

8.5 The prosecution has also examined PW -9 Prabhakar Baburao Nare who was having 'Pan-galla' near Unnati Vidyalaya where the alleged incident took place. In para-3 of his examination-in-chief he has stated that in Unnati school, PW-3 Savita was staying where two groups had collected. In this group there was one lady who alleged that PW-3 Savita was spoiling her husband and accused Rajesh and Faruk alleged that she was indulging in illicit practices. The accused asked PW-3 Savita to go to the police station which she did not agree. This witness has been declared hostile by the prosecution.

8.6 The prosecution has also examined PW-10 Punjalal Chandulal, Executive Magistrate, who held the test identification parade, and also PW-1 Rohit Devchand Shah, a Panch witness. Looking to the nature of their evidence, once again there is indeed nothing on the basis of which it could be safely concluded that the accused persons were properly identified before the Executive Magistrate. In fact rightly no efforts were made by the learned APP requesting us to accept and rely upon their evidence.

8.7 The prosecution has also examined PW-15 Head Constable Udesing Laxmansinh who on the alleged date and at the time of incident was on patrolling duty. At about 10.15 near Unnati School on being signalled to stop the vehicle he stopped it. At that time, he was informed by persons stopping the vehicle that they were the labourers working in Unnati School and that when they after completing their supper were sitting, seven to eight persons entered the room and administered threat as a result thereof PW-4 Arvind, PW-5 Ramila his wife and PW-6 Ranjio were made to leave the place. Thereafter, PW-3 Savita was dragged in a room and her modesty was likely to have been outraged. According to this HC, when he entered the Unnati Vidyalaya he found one person in totally naked condition. There were other persons also. He overheard - they interse saying "my turn, my turn". On seeing the police, they got frightened and tried to make good their escape but were caught. On making inquiry with PW-3 Savita she narrated the entire incident as reproduced in her evidence. PW-15 Udesinh Laxman was the person who accompanied PW-4 and others and went to the scene of incident. He also repeated the version given by PW-3 Savita before him and finding of Faruk as a

person found naked at the scene of the offence. He has also stated that all the six accused persons had given their respective names, and PW-3 Savita stating that she wanted to file a complaint, she and the accused were thereafter taken to the City Police Station where PW-3 Savita lodged the complaint exh.66. He stated that he could identify all the accused persons who were present before the court. In cross-examination, this witness has stated that he has not seen accused No. 1 Rajesh at the scene of the incident and saw him only when he was arrested. The evidence of this witness does not inspire our confidence more particularly in view of the totally wanting evidence of PW-3, her other relative witnesses and the medical evidence of PW-1 Dr. R.N. Tandon. The most important reason for not accepting the prosecution case is the fact that at the relevant point of time, there was complete darkness at the scene of incident as there was no light and accused were not known previously to the prosecution witnesses. Under the circumstances, it would be quite reasonable and probable to infer that moment the police appeared on the scene of the offence, naturally by virtue of very instinct of the self preservation, any person with whatever little intelligence he has, he would see to it that he makes good his escape immediately and do not remain there to be ultimately detected, identified and arrested by the police to be chargesheeted to stand trial and ultimately getting convicted for the serious offence of gang-rape and severely punished !! Accordingly, in only darkness when the alleged offence took place one accused escaped, it was indeed not possible for the victim PW-3 Savita or any other prosecution witnesses to duly identify them more particularly when they were previously unknown to them ! In this view of the matter, the claim of this witness that when accused tried to escape they were the real accused persons caught on the spot is just beyond common sense to be accepted.

9. Arrest Panchnama necessity there of :- In fact, it is here and in such type of cases only where at the earliest and on the spot arrest Panchnama of accused to be made by the police assumes very great importance and consequential significance. Such an arrest Panchnama of accused at the earliest will further enable the Court as to when in fact accused came to be arrested and subjected to the test-indentification parade before the Executive Magistrate. But as informed by the learned APP in the instant case there is no such arrest Panchnama on the record. Not that always in all cases, irrespective of the attending facts and circumstances of the case, if there is no arrest Panchnama, it is fatal to the prosecution but at the sametime, in order to lend

intrinsic credibility of the prosecution case drawing of the arrest Panchnama is absolutely necessary.

10. From the aforesaid appreciation of the evidence, it is clear that the whole story given by the witnesses appear to be quite cock and bull story which is indeed difficult to gulp down !! It is totally 'LIAR BRAND' story !! It simply does not stand to reason that when police appeared on scene all the accused persons with their heads down just waited to be arrested by the police so that they can be prosecuted and that too on a serious charge of a gang-rape and be sent to jail !! In this view of the matter, we have reason to believe that PW-15 Head Constable Udesinh Laxman has tried to give a gloss to the prosecution case.

11. Word of caution to Government in the matter of granting ex gratia compensation :- We do not know whether as alleged by the learned Advocate appearing for the accused, it was for sharing a batty of Rs. 10,000/- to be paid by the Social Welfare Department as ex-gratia compensation to PW-3 Savita that a false case came to be framed up ! We wish the allegations is wrong, and accordingly not prepared to accept at its face value. But in case if that is so, then it is too sad a commentary reflecting very seriously upon the police personnel, very much requiring Social Welfare Department to give a second thought whether on such false and concocted story as big an amount as that of Rs. 10,000/= coming from the honest tax-payers' money can be given to PW-3 Savita. No doubt, the policy of the Government to give a helping hand to suffering persons from Scheduled Castes and Scheduled Tribes is too laudable an object, but like every laudable object there are persons and persons in the society who exploit the good-will of the Government quite schemingly to the greatest prejudice and disadvantage to the public exchequer filled with money coming from the blood, tear, toil and sweat of the honest tax-payers. In one of the decisions of this court (Coram : K.J. Vaidya & M. H. Kadri JJ.) rendered in the case of MOHANLAL AMARJI MARWEADI VS. STATE OF GUJARAT, reported in 37, (1996) 2 GLR, 200, this court quite at length has elaborated this aspect in para-11 of the said decision. We hope that a copy of the said judgment has reached the Government and the Government is actively giving serious thought about it. If not, by this judgment, we would like to once again remind the Government to be alive to some scheming persons who are just out to dupe and exploit the good-will of the Government in such a way that in a good given case, some real victim may also suffer because the middle agencies

take away lion share of the award on totally false case !! This we are saying with a view to see that a genuine victim of Scheduled Castes and Scheduled Tribes community is not prejudiced and deprived to quite beneficial ex gratia compensation because of such repeated prima facie false, frivolous and vexatious claims made by some unscrupulous persons creating serious doubt about the genuineness of the case !! The Government for this purpose, shall have to immediately set-up a committee to set-right the policy by taking in confidence the leaders of Scheduled Castes and Scheduled Tribes communities to prevent the possible abuse of benevolent policy causing great damage to the public exchequer and in real good given genuine case the victim not getting the full compensation because of mischievous middle-men intermediaries !!

12. In the light of the aforesaid appreciation of evidence, we have indeed no doubt whatsoever in our mind that PW-3 Savita for whatever reason has given a concocted version. She is a lady who in terms has admitted that because of darkness had not seen any accused person. She is a lady who says that she was dragged, she was gang-rapped by the accused persons, and still if we look to the medical evidence, we find a completely belied story. The heat and excitement of the sexual intercourse generated by blind, irresistible, forceful, violent, savage sex-passion is ordinarily quite violent enough where in the process when a lady would resist the rape, in that life and death honour struggle, scuffle by way of self-defence she will use her all powers and intelligence at her command to wriggle out from the clutches of the accused with a view to avoid being raped, and for that, nails, teeth, kicks and fist blows are the best available weapons at her command to make use of. She would ordinarily certainly bite, scratch her nails on the back and everywhere on the person of accused. No doubt, these marks would be absent in case the accused succumbs herself to the sexual intercourse at the point of gun or knife or after tying hand and feet or by administering drug making her unconscious or the girl raped is quite minor having no strength and will to resist the rapist. But that is not the case here. Further still, if there was a forcible gang-rape, in scuffle while over-powering her, her private part, nearby thighs were bound to have some injuries, even bleeding, but that is also conspicuously absent ! Not only that but in her struggle to protect her honour, the sari, blouse, braziers were also further likely to be torn and tattered and further still, when dragged was also further likely to be soiled with some

scratches injury on back ! Nothing of the sort is found here !!. We do not for a moment suggest that when there is no such evidence, victim of rape is always and invariably a liar and accordingly the accused can not be convicted on the charge of rape ! No. If the prosecutrix is ultimately found to be totally dependable and if the rape is committed under some dire threat endangering her life, limb or by administering some drug, rendering her unconscious then she may not have any external injury on any part including vagina. But that is not the case here. Further more it is important to note that when PW-3 Savita came to be examined by PW-1 Dr. R.N. Tandon within six hours of the incident she had not taken any bath. Not only that but at that time, she had not changed even her clothes !! Under the circumstances, timewise since the offence was quite fresh enough to leave behind the clues of offence viz. some external and internal injury, some pubic hair of the accused on her private person, some bleeding, semen marks etc. was bound to be there !! Because the allegation here was that of gang-rape !! In fact, in a case of gang-rape, it would be little bit difficult to properly walk even !! Nothing of the sort is found though as alleged more than one, 8 persons sexually exploiting ravaging her against her will committed gang rape !! Ordinarily, in such case of gang-rape, tough resistance being very natural, atleast at the initial stage when the attempt is made she was bound to scream, raise alarm and resist with all her might at her command ! Accordingly, her saree, or blouse, or brassier aught to have been found torn, etc. !! Nothing of the sort is found or recovered from scene of the incident and still are we to believe the story of alleged gang-rape given out by PW-3 Savita and her other associate liar prosecution witnesses ! Is it not that when such vague, improbable evidence is before the Court, it is not the accused, nor even the liar witnesses but the commonsense of the Judge itself is on trial ?? These days the character-assassination is not uncommon. These days, with utmost respect, it is neither unusual or uncommon, where utterly false, frivolous and vexatious allegations can be levelled at any time, at any place against any person with all impunities rather invoking false sympathy in a given case for the purposes of earning ex gratia compensation from the Social Welfare Department !! With this readily available criminal motivating background in some cases if the court is to readily surrender its acumen and commonsense to baseless, emotional urges based on crocodile tears to do real and substantial justice swayed by mere allegation of gang-rape, and the misplaced sympathy for the victim of rape, then that would be the

bleakest day for the justice and the Administration of Justice to show its face and save its image !! No responsible, sensible court can ever be a party to such non-sense. The criminal jurisprudence stands for the accused to the extent that wherever there is a reasonable doubt, benefit of that doubt should be resolved in favour of the accused. In this background when the prosecution story is false to be wholly improbable, rather totally cock and bull, how indeed a court can convict the accused on patently liar's evidence is simply unthinkable and yet the fact remains that one of the accused person is held guilty, if not solely for 376 of IPC, then for Section 376 read with Section 511 of the IP Code !! It is indeed good that the learned trial Judge could acquit other accused persons. But it is equally strange and unfortunate to find accused Faruk convicted not to rape, but attempt to committee rape, and punishment is given to suffer SI for 1 year and six months and that too on the basis of quite unbelievable evidence of prosecutrix !! The reason is if PW-3 was capable of spinning an imaginary story of the gang-rape, naming eight accused before the Court whom she had not previously known, more so when there was no light at 10.00 p.m. and further still, quite contrary to the medical evidence on the record, what is the guarantee of truth that her evidence as regard accused Faruk is also true, even for the attempt of committing rape ?? It is indeed interesting to note that the trial court has altogether imagined and weaved out a new story altogether which was never a version of PW-3 before the Court ! A grown-up lady, when she alleges of the gang-rape, and if found to be instrinsicably undependable on the said charge, how indeed the Court can infer, assume or presume that well if no case of gang-rape was made out atleast one of the accused had attempted to commit rape ?? And that too when he acquitted 7 other accused persons ?? What is this strange logic if it is not manifest, absurdity and total perversity !! Further, if indeed it was an attempt to commit a rape, punishment ought to have been far more severe and deterrent than what has been awarded in this case. How can you spare a person going in a company of 8 persons and trying to attempt a rape on helpless, poor working women imposing a sentence of only one year !! No lenient view can ever be taken !! Had indeed the evidence of PW-3 Savita inspired our confidence, then we would have certainly straighway not only sustained the order of conviction against Faruk, but would have also passed a deterrent sentence because such types of sex maniacs cannot be allowed to go scot-free in the society with the light sentence !! Now a days the trial takes more than an year and the accused persons are not

released on bail when alleged to have committed serious offences like rape, and if they have to remain in jail on such hopeless prosecution evidence, what compensation are we to give to them and as against that the prosecutrix like the one in the instant case gets unjust compensation of Rs. 10,000/= (now increased to Rs. 1,00,000/=) by way of ex gratia compensation !! What strange, absurd and manifestly unequal standards !! Accused gets pre-trial punishment when he in very many cases is acquitted and the alleged self-styled victim of rape before her credibility is tested and accepted at the time of trial gets entire ex gratia compensation !! What is happening in the Society !! Has Government given any thought to this !! We in case of Mohanlal Amarji Marwadi (Supra) in para-11 have elaborately discussed and commented upon the false claim of ex gratia compensation and the abuse of State sympathy for down trodden. Under the circumstances, the concerned officers must take up the recovery proceedings against PW-3 Bai Savita, if she has been given Rs.10,000/- by way of compensation. We would like to sound a note of caution and warning that whenever and wherever the social benefit policy or Act is enacted, the fruits of it does not necessarily and always go to the person for whom it is meant, in fact, in real life we often learn that regular rackets are going on to exploit and take disadvantage of Government policy as we find ambulance chasers in M.A.C.T. cases where the real victims are robbed of their substantial portion of compensation, by some notorious, intervening, scheming self-styled brokers of justice anti-socials where except the real victim of the accident others derive more benefits ! We are afraid like wise such rackets in MACT cases, if not so far in existence will surely make entry in claiming absolutely bogus, unfounded claim of ex-gratia compensation for the innocent, honest, poor needy's from SC & ST class. The possibility also could not be ruled out where genuine victim of atrocity under the Atrocity Act, who is entitled to quite fabulous ex-gratia compensation, may not get her entire due and middle man may siphons away the lion's share, leaving for her practically nothing !! This happens. Not only this but this ex gratia compensation may turn-out to be a motivating force to file false complaint against innocents !! This is simply terrible and worst !! In given such cases, it is rape of justice !! And if this happens because Government is unable to take care of the situation then it is playing in the hands of anti-socials by hood-winking the issue !! Not to take care of such problem is indeed breach of trust of the honest tax payers rather their pay masters by the concerned Government Officers. Under the circumstances, the Chief

Secretary is directed to ask its State CID Crime to be on look out for some such brokers and racketeers; if any.

13. That takes us now to the acquittal appeal. Having discussed the prosecution evidence at length as above, in our opinion there is not even a semblance of evidence on the basis of which learned APP can remotely convince us to take a view contrary to the one already taken by the trial court. When we called upon the learned APP to assail the impugned judgment and order of acquittal, except saying generally that he is pressing hard for the appeal, he was not in a position to enlighten us how the same was perverse enough to reverse the order of acquittal and change our view which we are taking in confirmation this order of acquittal. In fact, there are cases and cases and this being one of them, we quite expected the learned APP to rise to the occasion and tell the court that there was no substance in the matter when there is indeed none. Anyway, we are not here to find fault with the learned APPs. We look to ourselves and discharge our duties as record and conscience of the court permits and warrants.

14. While concluding, this court appreciates the assistance rendered by Mr. Saurin A. Shah, the learned Advocate (appointed) appearing for the accused.

15. In the result, both these appeals fail and are dismissed. Not only that but accused-Faruk Ahmed Shaikh is acquitted of the alleged offences under section 511 read with section 376 and 341 of the IPC.

16. The Registrar is directed to forward a copy of this judgment to (1) Social Welfare Board, Gandhinagar; (2) Chief Secretary, Government of Gujarat; (3) Secretary Legal Department; and (4) Secretary, Finance Department for information and necessary action at their end, requesting each one of them to appraise this Court what action they intend to take and when, on or before 15th June, 1997.

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